

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 United States of America,
9
10 Plaintiff,

No. CR-13-8043-001-PCT-GMS

ORDER

11 v.

12 Valance Ray Smith, Sr.,
13 Defendant.

14 Pending before the Court are Defendant Valance Ray Smith, Sr.'s Motions to
15 Suppress. (Doc. 34 ("First Motion to Suppress"); Doc. 43 ("Second Motion to
16 Suppress.")). For the reasons discussed below, Smith's Motions are denied.

17 **BACKGROUND**

18 On the morning of September 29, 2012, Maydena Samson arrived at the Peach
19 Springs Emergency Medical Services Office ("EMS") with bodily injuries. (Doc. 34 at 2;
20 Doc. 47 at 2.) Hualapai Nation Police Officer Jaros was dispatched to the EMS at
21 approximately 10:51 a.m. (*Id.*) An Emergency Medical Technician at EMS notified
22 Officer Jaros that Samson was observed to be bleeding from her right elbow. He was
23 advised that Samson had stated that she had been assaulted with a metal pipe by her
24 boyfriend, Valance Smith ("Defendant"). (Doc. 47 at 2.)

25 Officer Jaros then responded to the residence of Erva Bravo, who Samson's
26 mother reported might have been a witness to the assault. (Doc. 47 at 3.) Bravo told
27 Officer Jaros that Samson had come to her house, bleeding from her right elbow, after
28 allegedly being assaulted by Defendant at his residence nearby. (*Id.*)

1 Officer Jaros then went to Smith's residence and spoke to Smith who Jaros
2 recognized sitting outside. (Doc. 34 at 2; Doc. 47 at 3.) Officer Jaros asked Smith what
3 had happened, and Smith told him that Samson had become angry with him and had
4 ripped off his colostomy bag. (Doc. 34 at 3; Doc. 47 at 3.) Officer Jaros asked Smith if he
5 could come inside the residence and Smith agreed. (*Id.*) Inside, Officer Jaros noticed
6 what appeared to be blood on the on the floor and wall. (Doc. 47 at 3.) Officer Jaros took
7 photographs of the scene inside the residence. (*Id.*) Smith told Officer Jaros that he had
8 been drinking, and Officer Jaros noted in his report that Smith's speech was slurred.
9 (Doc. 34 at 3.)

10 Later that day, shortly after 2:23 p.m., Officer Jaros returned to Smith's residence
11 after he was advised by Hualapai Nation Police Department Criminal Investigator Roger
12 Felker that Samson had reported that Smith had assaulted her with a metal pipe. (Doc. 34
13 at 3; Doc. 47 at 3.) Officer Jaros first took blood samples from outside the residence.
14 (Doc. 47 at 3.) He then proceeded to Smith's front door and asked for permission to come
15 inside the house to take blood samples. (Doc. 34 at 3; Doc. 47 at 4.) Smith agreed and
16 signed a "Consent to Search Waiver" form. (*Id.*) Officer Jaros removed a blood sample
17 from the residence, took further photographs, and seized a metal pipe with what appeared
18 to be blood stains. (*Id.*)

19 That evening, at approximately 7:30 p.m., Officer Nixon, also of the Hualapai
20 Nation Police Department, went to Smith's residence and arrested him. (Doc. 34 at 3;
21 Doc. 47 at 5.) Officer Nixon read Smith his *Miranda* rights. (Doc. 34 at 3.) When Smith
22 was booked on the charges, a portable breath test was performed and Smith's BAC was
23 0.224%. (*Id.*; Doc. 46 at 5.)

24 The next day, on September 30, 2012, Smith was interviewed at the Hualapai
25 Adult Detention Center by Felker and FBI Special Agent Alberto Chavez. (Doc. 43 at 4;
26 Doc. 52 at 2.) Smith was advised of his *Miranda* rights and, at approximately 12:38 p.m.,
27 signed a written waiver of those rights. (Doc. 43 at 5; Doc. 52 at 2.) During the interview,
28 Smith was confronted with physical evidence obtained from the September 29 searches

1 of his home. (Doc. 43 at 5.) Smith claimed that on the day of the alleged assault, he was
2 under the influence of alcohol, anti-seizure medication, and pain relievers. (Doc. 34 at 3–
3 4; Doc. 47 at 5.) Smith asserted that he had a seizure on “Friday” (believed to be
4 September 28, 2012) and that he had been treated at Kingman Regional Medical Center.
5 (Doc. 34 at 3; Doc. 47 at 5.)

6 In his First Motion to Suppress (Doc. 34), Smith now moves to suppress the
7 evidence seized by Officer Jaros during the two searches of Smith’s home on September
8 29. This includes the photographs taken by Officer Jaros, the blood samples, and the
9 metal pipe. (*Id.*) He asserts that any consent he gave to search his home was insufficient
10 because of his intoxication, and thus that the warrantless searches of his home were
11 unlawful. (*Id.*) In his Second Motion to Suppress (Doc. 43), Smith moves to suppress his
12 statements made during the September 30 interview. He argues that he did not voluntarily
13 waive his *Miranda* rights, that he did not make a voluntary statement, and that the
14 statements made were the result of the evidence obtained through the allegedly unlawful
15 searches of his home. (*Id.*) The Court held an evidentiary hearing on October 2, 2013.

16 ANALYSIS

17 1. Defendant’s First Motion to Suppress

18 Smith first argues for the suppression of the photographs taken and evidence
19 seized during the two searches of his residence on September 29. (Doc. 34.) The “Fourth
20 Amendment rule ordinarily prohibit[s] the warrantless entry of a person’s house as
21 unreasonable *per se*,” but such warrantless searches are lawful “with the voluntary
22 consent of an individual possessing authority.” *Georgia v. Randolph*, 547 U.S. 103, 109
23 (2006); *see also Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973). Smith does not
24 contest that he possessed this authority.

25 The Government has the burden of demonstrating that consent was “freely and
26 voluntarily given.” *United States v. Koshnevis*, 979 F.2d 691, 694 (9th Cir. 1992)
27 (internal citations omitted). Whether consent was voluntary is based on the totality of
28 circumstances. *Schneckloth*, 412 U.S. at 248. To determine voluntariness, the Ninth

1 Circuit looks to five factors: (1) whether the defendant was in custody; (2) whether the
2 arresting officers had their guns drawn; (3) whether *Miranda* warnings were given; (4)
3 whether the defendant was told that he had the right to refuse consent; and (5) whether
4 the defendant was told that a search warrant could be obtained. *United States v. Basher*,
5 629 F.3d 1161, 1168 (9th Cir. 2011). The Court need not find that all five factors support
6 the government in order to determine that consent was voluntary. *Id.*

7 Here, Smith was not in custody during either of the two challenged searches.
8 Officer Jaros did not have a gun drawn during the search. These factors both support a
9 finding of voluntariness. At the third factor, Smith did not receive *Miranda* warnings
10 before the search, but as Smith was not in custody, *Miranda* warnings were not required.
11 *See Basher*, 629 F.3d at 1168. Next, it does not appear that Officer Jaros told Smith of his
12 right to refuse consent at the first search, during which the initial photographs were taken.
13 Officer Jaros read Smith the “Consent to Search Waiver” form before the second search.
14 The waiver explained a defendant’s right to refuse consent and it appears that Smith both
15 indicated that he understood the waiver and signed the form. (Doc. 47 at 8–9.) Thus the
16 fourth factor supports a finding of voluntariness, at least for the second search. Finally,
17 there is no indication that Officer Jaros mentioned the possibility of obtaining a search
18 warrant or made any related threats.

19 Altogether, the five factors support a finding of voluntariness for both searches of
20 Smith’s home. However, Smith argues that despite the factors generally indicating that
21 his consent to search was voluntary, Smith was not able to give such consent because of
22 his level of intoxication during the searches. (Doc. 34 at 5–6.) When a defendant has
23 alleged that he lacked the mental capacity to consent, the Government must prove that “a
24 reasonable officer would have viewed [the defendant’s] consent as voluntary.”
25 *Koshnevis*, 979 F.2d at 694–95 (citing *Illinois v. Rodriguez*, 497 U.S. 177, 188–89
26 (1990)). While it does appear that Smith was intoxicated during the September 29
27 searches according to the report from Officer Jaros, the record suggests that Smith had
28 begun to clean up the crime scene before Officer Jaros arrived, that he gave Officer Jaros

1 his own version of events, was able to answer the Officer's questions, sign the consent
2 form, and otherwise indicate that he understood why Officer Jaros was asking to search
3 his home. In light of these actions and statements, Officer Jaros reasonably concluded
4 that Smith validly consented to the searches. Smith cites no authority to suggest that his
5 intoxication during the searches nonetheless vitiates his consent to search.¹ Accordingly,
6 Smith's motion to suppress the fruits of the September 29 searches is denied.

7 **2. Defendant's Second Motion to Suppress**

8 In his Second Motion to Suppress, Smith argues for the exclusion of his statements
9 made during the September 30 interview at the Hualapai Adult Detention Center on the
10 grounds that he did not make a valid waiver of his *Miranda* rights because he was
11 intoxicated, that his statements to police were not voluntary because he was intoxicated,
12 and that his statements are inadmissible because they were induced by confrontation with
13 the fruits of the September 29 searches of Smith's home.

14 Smith first asserts that he did not make a valid waiver of his *Miranda* rights
15 because he was intoxicated at the time he provided his waiver. Smith does not contest
16 that he was advised of his *Miranda* rights at the beginning of the September 30 interview.
17 Thus, his statements made during the interview are admissible against him if he waived
18 those rights "voluntarily, knowingly, and intelligently." *Miranda v. Arizona*, 384 U.S.
19 436, 444 (1966). Smith argues that his waiver was invalid because he remained under the
20 influence of the prescription drugs and alcohol he ingested on September 29. (Doc. 43 at
21 7.) However, Smith's interview occurred approximately 17 hours after he was taken into

22
23 ¹ But see *United States v. Reynolds*, 646 F.3d 63, 74 (1st Cir. 2011) (finding
24 consent to search valid as there was "no evidence that [the defendant] was affected by
25 any underlying illness during the time of the search," although she had been involuntarily
26 committed to a mental hospital one month prior); *United States v. Willie*, 462 F.3d 892,
27 895–97 (8th Cir. 2009) (finding consent to search valid because although defendant may
28 have been under the influence of methamphetamine, "the evidence does not suggest that
he was so intoxicated that he was not 'competent to understand the nature of his acts'"
(internal citation omitted)); *United States v. George*, 987 F.3d 1428, 1430–31 (9th Cir.
1993) (finding consent to search valid although defendant was in a hospital emergency
room, three hours after having regained consciousness following a drug overdose).

1 tribal custody on September 29. Smith was advised of his rights, was able to sign the
2 *Miranda* waiver form, never indicated that he wished for questioning to stop at any point,
3 and appeared responsive and lucid throughout his interview. Thus, the totality of the
4 circumstances demonstrates that Smith's waiver of his *Miranda* rights was valid.²

5 Smith next asserts that even if the requirements of *Miranda* were satisfied, his
6 statements should be excluded because the statements constitute an involuntary
7 confession. Smith concedes that most of the factors for determining whether a statement
8 is voluntary under 18 U.S.C. § 3501(b) indicate admissibility in this case. Smith argues
9 that despite these factors, his statements were still involuntary because he remained under
10 the influence of prescription drugs and alcohol ingested the day before the interview.
11 Smith cites to no authority that suggests that an individual with his level of intoxication is
12 unable to provide a voluntary confession.³ Again, the totality of the circumstances
13 demonstrates that Smith's statements were voluntarily made.

14 Finally, Smith argues that any statements made during the interview are
15 inadmissible because they were induced by confrontation with the evidence obtained
16 from the September 29 searches. As previously noted, Smith gave valid consent for the
17 September 29 searches and thus the searches were lawful. Any statements Smith made to
18 police on September 30 cannot be suppressed on the grounds that they were induced by
19 the fruits of those lawful searches. Therefore,

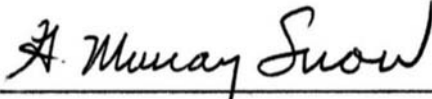
20 ² While a defendant's intoxication or physical distress is certainly relevant to the
21 inquiry into whether a waiver of *Miranda* rights was valid, courts have found defendants
22 able to provide a valid waiver despite being in such a condition. *See, e.g., United States v.*
23 *Rodriquez-Rodriquez*, 393 F.3d 849, 855 (9th Cir. 2005) (finding defendant's waiver of
24 *Miranda* rights valid despite evidence that defendant was suffering from mild to
25 moderate heroin withdrawal); *George*, 987 F.3d at 1430–31 (noting that “a defendant can
voluntarily waive his *Miranda* rights even when he is in the hospital, on medication, and
in pain”).

26 ³ *But see George*, 987 F.3d at 1431 (finding defendant's statements were made
27 voluntarily when defendant was hospitalized and in critical condition following an
28 apparent drug overdose when his statements were made); *United States v. Martin*, 781
F.2d 671, 673–74 (9th Cir. 1985) (finding defendant's statements to have been made
voluntarily while defendant was in pain and under the influence of Demerol, a painkiller).

1 **IT IS HEREBY ORDERED** that Defendant's Motion to Suppress (Doc. 34) is
2 **denied.**

3 **IT IS FURTHER ORDERED** that Defendant's Motion to Suppress (Doc. 43) is
4 **denied.**

5 Dated this 7th day of October, 2013.

6
7 
8 _____
9 G. Murray Snow
10 United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28